

JUDGE DAVID BRIONES

FILED

MAY 13 2020

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY 23
DEPUTY

HENRY JONES
FED. REG. # 46810-112
C/O
FCI, LA TUNA PETITIONERS
FEDERAL CORRECTIONAL
INSTITUTION - LA TUNA
P.O. BOX 3000
ANTHONY, NM/TX 88021

EP20CV0132

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

HENRY JONES/REGINALD GILBERT/
VICTOR RABB/DAVID LOPEZ/ABRAHAM
DELGADO...ET AL.

CASE NO:

Petitioners,

-V-

PETITION FOR APPOINTMENT OF COUNSEL FOR
CLASS ACTION SUIT FOR INJUNCTIVE OR DECLARATORY RELIEF
FROM FCI, LA TUNA, PURSUANT TO RULE 23 & RULE 23(b) OF THE
FEDERAL RULES OF CIVIL PROCEDURE, AND THE ALL WRITS ACT
UNDER 28 U.S.C 1651(a) FOR FAILURE TO UTILIZE ITS
LEGISLATIVE POWERS TO TRANSFER AT RISK INMATES
TO HOME CONFINEMENT...ETC, IN THE WAKE OF THE DEADLY
COVID 19 PANDEMIC.

BERGAMI (WARDEN)
Respondent

COMES NOW, the undersigned in this Class Action, seeking leave of this Honorable Court to entertain the aforementioned cause where in light of the Covid 19 Pandemic, FCI, La Tuna is on the verge of being reduced to a 'ticking time bomb' and a potential incubator with deadly consequences. Appointment of a lawyer by this Honorable Court will be propitious to address this humanitarian emergency. *SEE APPENDIX - EXHIBIT 1*

Petitioners avers that it this action meets the requirements for a 'Class Action' found in Rule 23 and 23(b) of the Federal Rules of Civil procedure, because one person or a small group of people who are similarly situated can sue on behalf of other people, in this case the inmates at FCI, La Tuna.

JURISDICTIONAL STATEMENT

Rule 23 and 23(b) of the Federal Rules of Civil Procedure gives this Honorable Court jurisdiction under this class action. Also, the All Writs Act permits this court to issue a writ of Mandamus when "necessary or appropriate in aid of its jurisdiction and 'agreeable to the usages and principles of law.' 28 U.S.C. 1651(a). Among other conditions, such a writ may issue only if, (as in this instant case) the party seeking it has "no other adequate means to attain the relief he desires" a condition not to ensure that the writ will not be used as as substitute for the regular appellate process, and if the party shows the writ is appropriate under the circumstances..." Cheney v. United States District Court, 542 U.S. 367, 380-381 (2004)(citations omitted). Further, in view of

the deadly circumstances surrounding the Covid 19 pandemic, and the invocation of Rule 23 and 23(b) of the Federal Rules of Civil Procedure, the jurisdiction of the District court in El Paso is proper.

STATEMENT OF ADJUDICATIVE FACTS PURSUANT TO RULE 201 OF THE FEDERAL RULES OF EVIDENCE

"The requirements for a class action are found in Rule 23 of the Federal Rules of Civil Procedure. Rule 23 is part of Title 23 of the United States Code (is part). Rule 23(a) requires;

- (1) The class must be so large that it would not be practical for everyone in it to bring the suit and appear in court.
- (2) There must be "questions of law or fact common to the class;"
- (3) The claims made by the people who bring the suit must be similar to the claims of everyone in the class, and
- (4) Te people who bring the suit must be able to "fairly and adequately protect the interests of the class."

Additionally, Rule 23(b) requires that any one f (1), (2) or (3), below is true:

- (1) Bringing separate actions would create a risk of;
 - (A) different rulings for different individual class members tat would lead to contradicting standards of conduct.
 - (B) The party who doesn't want it to be a class action has acted the same toward in the class, so that final injunctive relief or declarative relief is appropriate for the class as a whole; or
- (3) The court finds that there are more questions of law or fact common to class members tam questions affecting only individuals.

THE GRAVAMEN AND QUESTIONS PRESENTED IN THIS CLASS ACTION

- (1) LACK OF ANY MEANINGFUL TESTING OF INMATES IN THE PRISON. This is a clear indication that in all likelihood, Covid 19 is spreading among the staff who are bringing it into and and out of the facilities.
- (2) FAILURE TO UTILIZE ITS LEGISLATIVE POWERS TO TRANSFER 'AT RISK' INMATES TO HOME CONFINEMENT. Of particular interest is the failure of FCI, La Tuna to follow the clear unexpurgated Directive from Attorney General Barr, with respect to releasing individuals to Home or House confinement. Petitioners' respectfully move this Honorable Court to take judicial notice of the words of the Attorney General, which in pertinent part, is stated in his initial memorandum;

"One of B.O.P.'s tools to manage the prison population and keep inmates safe is the ability to grant certain eligible prisoners home confinement in certain circumstances. I am hereby directing you to prioritize the use of your various statutory authorities to grant home confinement to inmates seeking transfer in connection with the Covid-19 pandemic. Many inmates will be safer in BOP facilities where the population is controlled and there is ready access to doctors and medical care. But for some eligible inmates, home confinement might be more effective in protecting their health. In assessing which inmates should be granted home confinement, you are to consider the totality of the circumstances for each individual inmate, the statutory requirements for home confinement and additional eligibility factors..."

FCI, La Tuna has failed woefully in implementing Attorney Barr's directive.

- (3) FCI, LA TUNA'S MANAGEMENT OF THE COVID 19 IS ATROCIOUS AT THE FACILITY, AND LEAVES MUCH TO BE DESIRED. Because the facility is using a thermometer to measure the temperature of inmates and staff, it is not even testing symptomatic prisoners and staff, which means the 'DATA POINT' is virtually meaningless. It certainly does not mean FCI, La Tuna is safe. This policy flies in the face of what the CDC and science instructs about the presentation and transmission of the

disease, which points to the fact that, when one has one confirmed case, it is fair to assume that under a symptomatic protocol, it is fair to assume there are more cases in the facility. The lack of any meaningful testing is leading to a false sense of security at TCI, La Tuna.

(4) FCI, LA TUNA AND BOP COMMUNICATION POLICIES ARE LEAVING FAMILIES IN THE DARK ABOUT THE SAFETY OF THEIR LOVED ONES' POTENTIALLY THREATENING CONDITION.

(5) THE BOP AND FCI, LA TUNA HAS MADE NO VISIBLE OR MEANINGFUL EFFORT TO REHABILITATE UNDOCUMENTED INMATES. THE EXCLUSIONARY POLICIES IT HAS IN PLACE ARE BOTH INEFFECTIVE AND INHUMANE. Ignoring the humanitarian emergency the Covid 19 calls for, allowing these category of inmates to die in prison rather than been deported to their respected countries presents unique health dangers, which should be addressed immediately.

In light of the above, the criteria earmarked by the Attorney General provides the pathway for the inmates of FCI, La Tuna demands to be granted, without any doubts as to abuse of process or abuse of discretion.

RETALIATION

In an abundance of caution, to avoid the real possibility of retaliation by the institution against the petitioners, the petitioners also craves the indulgence of this Honorable Court to issue an order to 'Cease and Desist' from any acts of retaliation on the petitioners by Prison Staff.

RELIEF SOUGHT

WHEREFORE Petitioners asks this Honorable Court to GRANT this Class Action filing and the following;

(a) appointing counsel to represent the inmates;

(b) issue an ORDER instructing the the BOP to comply with the five points raised in its 'GRAVAMEN AND QUESTIONS A PRESENTED' on an individualized basis; to avoid the casualties experienced in prisons throughout the country;

(c) With respect to service of process fee, for it to be waived under Rule 4(d) of the Federal Rules of Civil procedure;

(d) issue an injunction that would prevent the prison officials or the Respondent to retaliate against the petitioners for the filing of this Class Action, for the exercise of their rights under applicable law.

DATE: MAY 8, 2020

RESPECTFULLY SUBMITTED,

Henry Jones
Henry Jones
(On behalf of the Petitioners)

PETITIONERS

NAME	FED. REG #	SIGNATURE
HENRY JONES	46810-112	<i>Henry Jones</i>
REGINALD GILBERT	71075-280	<i>Reginald Gilbert</i>
DAVID LOPEZ	17702-180	<i>David Lopez</i>
VICTOR RABB	50294-179	<i>Victor Rabb</i>
Cedric Washington	43634-274	<i>Cedric Washington</i>
Abraham Delgado	09618-057	<i>Abraham Delgado</i>

CERTIFICATE OF SERVICE

I, HENRY JONES, ON BEHALD OF THE FCI LA TUNA PETITIONERS certify that I have served a true and correct copy of the application for the " CLASS ACTION UNDER RULE 23/23(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE" to the following parties to the above entitled action by placing postage;

U.S. DISTRICT COURT
525 MAGOFFIN STREE
EL PASO, TEXAS 79901

BERGAMI (WARDEN)
C/O
OFFICE OF THE UNITED STATES ATTORNEY
700 SAN ANTONIO STREET
EL PASO, TX 79901

and deposited same with prison officials her at the Federal Correctional Institution, P.O. Box 3000, Anthony, NM/TX 88021, on April 18, 2020, pursuant to Title 28 United States Code, Section 1746. I declare under penalty of perjury that the above is true.

Executed 8th day of May, 2020

Respectfully Submitted,

HENRY JONES
RED, REG. # 46810-112
FCI, LA TUNA
P.O. BOX 3000
ANTHONY, NM/TX 88021

ON BEHALF OF THE FCI LA TUNA PETITIONERS RE: CLASS ACTION

HENRY JONES 46810-112
Reginald Gilbert 71075-280

Victor Rabb 50294-179

Cedric Washington 43639-279
David Lopez 17702-180

Abraham DELGADO 09618-051

Henry Jones
Reginald Gilbert

Victor Rabb

Cedric Washington
David Lopez
Abraham Delgado

APPENDIX IX

EXIHIBIT 1

Coronavirus Behind Bars: Cook County Jail Is Top U.S. Hot Spot ...

Link: <https://www.nytimes.com/2020/04/08/us/coronavirus-cook-county-jail-chicago.html>

Link Code: oxwg

Apr 8, 2020 ... Latest Updates: Coronavirus Outbreak in the U.S. ... But those measures have not prevented a dizzying pace of infection among a population in ...

Lompoc federal prison coronavirus outbreak worst in nation - Los ...

Link: <https://www.latimes.com/california/story/2020-04-16/coronavirus-outbreak-at-lompoc-federal-prison-is-worst-in-nation-with-69-inmates-25-staff-infected>

Link Code: p44v

Apr 16, 2020 ... The nation's worst coronavirus outbreak in a prison is at the federal penitentiary in Lompoc, where 69 inmates and 25 staff members are infected. ... "He was happy the last time I spoke to him from there." But within hours of ...

Coronavirus in the U.S.: Latest Map and Case Count - The New York ...

Link: <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>

Link Code: mhc6

Most states and counties only report figures in which a coronavirus infection ... infections and 266 deaths in inmates and staff at state prisons, federal prisons and ...

BOP: COVID-19 Update

Link: <https://www.bop.gov/coronavirus/>

Link Code: nrri

The primary lane of information for the public regarding Coronavirus ... Prevention (CDC) has established a resource portal on CDC.gov with the latest information from ... The BOP has 143,803 federal inmates in BOP-managed institutions and ...

Releases, infections, fear: U.S. coronavirus crisis in jails and prisons ...

Link: <https://abcnews.go.com/US/releases-infections-fear-us-coronavirus-crisis-jails-prisons/story?id=69803066>

Link Code: o6dv

Mar 26, 2020 ... In New York City -- America's current epicenter of infection -- tension is building inside some units of Rikers Island's sprawling jail complex, ...

Coronavirus: Bureau of Prisons has 1,500 COVID-19 cases, 31 deaths

Link: <https://www.usatoday.com/story/news/politics/2020/04/29/coronavirus-bureau-prisons-has-1-300-covid-19-cases-30-deaths/3046668001/>

Link Code: q0yc

4 days ago ... More than 1,500 federal prisoners now have COVID-19 as officials expand testing ... The number of coronavirus infections in the country's largest ... since prison officials announced last week that they're expanding testing to ...

Could Coronavirus Cause a National Prison Lockdown? | Healthiest ...

Link: <https://www.usnews.com/news/healthiest-communities/articles/2020-03-13/could-coronavirus-cause-a-national-prison-lockdown>

Link Code: mp5z

Mar 13, 2020 ... Federal prison union officials and inmate advocates warn that the combination of chronic ... The Latest News on the Coronavirus Outbreak] ... the impact of losing staff members to quarantines for coronavirus infections.

Prison uprising put down as US inmates demand protection from ...

Link: <https://www.theguardian.com/us-news/2020/apr/10/us-prisons-coronavirus-uprising-riot>

Link Code: oyz8

Apr 10, 2020 ... in Kansas on Friday, the latest example of unrest in US prisons amid concern about rising numbers of coronavirus infections among inmates.

Nearly half of inmates at Terminal Island federal prison infected with ...

Link: <https://www.dailybreeze.com/nearly-half-of-inmates-at-terminal-island-federal-prison-infected-with-coronavirus>

Link Code: pyc8

4 days ago ... The Terminal Island Federal Correctional Institution has 443 inmates infected with the coronavirus, the most of any federal lockup and more ...

Coronavirus rips through prisons, striking inmates and workers

Link: <https://www.usatoday.com/story/news/politics/2020/04/09/coronavirus-hits-workers-inmates-jails-prisons-threatened/2968807001/>

Link Code: p04i

Apr 9, 2020 ... Coronavirus outbreak: Hundreds of infected, quarantined inmates in ... Amid mounting infections in the federal Bureau of Prisons last week, ...

Coronavirus Update (Live): 3,565,310 Cases and 248,256 Deaths ...

Link: <https://www.worldometers.info/coronavirus/>

Link Code: l0f8

Coronavirus counter with new cases, deaths, and number of tests per 1 Million ...

Daily charts, graphs, news and updates. ... COVID-19 Coronavirus Pandemic.

Coronavirus Disease 2019 (COVID-19) | CDC

Link: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>

Link Code: kbzg

Latest Updates. May 03 Testing in the U.S.; May 03 Dental Settings; May 03

Interim Infection Prevention and Control Guidance for Veterinary Clinics During the ...

Coronavirus Update (Live): 3,232,061 Cases and 228,504 Deaths ...

Link: https://www.worldometers.info/coronavirus/?utm_campaign=homeAdvegas1?

Link Code: q1el

COVID-19 Coronavirus Pandemic ... The charts above are updated after the

close of the day in GMT+0. ... Sources are provided under "Latest Updates".

April 29 US coronavirus news - CNN

Link: <https://www.cnn.com/us/live-news/us-coronavirus-update-04-29-20/index.html>

Link Code: q503

4 days ago ... The coronavirus pandemic has impacted nearly every facet of American life.

Follow here for the latest ... Updated 9:07 p.m. ET, April 29, 2020 ...

Coronavirus Pandemic Update 63: Is COVID-19 a Disease of the ...

Link: https://www.youtube.com/watch?v=Aj2vB_VITXQ

Link Code: q504

4 days ago ... COVID-19 Update 63 with critical care specialist Roger Seheult, MD. Dr. Seheult explains the theory that seems most plausible to us here at ...

Coronavirus in the U.S.: Relaxed Rules and Warm Weather Test ...

Link: <https://www.nytimes.com/2020/05/02/us/coronavirus-updates.html>

Link Code: q212

1 day ago ... This briefing has ended. Follow live updates on the coronavirus pandemic here.

Here's what you need to know: Warmer weather lures people ...

Coronavirus Pandemic Update 65: COVID-19 and Oxidative Stress ...

Link: <https://www.youtube.com/watch?v=gzx8LH4Fjic>

Link Code: q505

2 days ago ... COVID-19 Update 65 with critical care specialist and pulmonologist Roger

Seheult, MD of <https://www.medcram.com> Dr. Seheult breaks down ...

Live Updates: Latest News on Coronavirus and Higher Education

Link: <https://www.insidehighered.com/news/2020/05/03/live-updates-latest-news-coronavirus-and-higher-education>

Link Code: q506

2 hours ago ... The university has lost more than \$45 million in the coronavirus pandemic so far, officials say. -- Lilah Burke. Ohio University Leaders Take Pay ...

The Coronavirus Outbreak - The New York Times

Link: <https://www.nytimes.com/news-event/coronavirus>

Link Code: mdn1

4 hours ago ... Latest Updates. Updated. May 3, 2020 ... The coronavirus pandemic is an unprecedented event in modern history. That's why our reporters and ...

Coronavirus - BBC News

Link: <https://www.bbc.com/news/coronavirus>

Link Code: q507

Get full coverage of the Coronavirus pandemic including the latest news, analysis
, advice and explainers from across the UK and around the world.

Union Files National Grievance Over Alleged Safety Violations at ...

Link: <https://www.govexec.com/workforce/2020/04/union-files-national-grievance-over-alleged-safety-violations-federal-prisons-during-coronavirus-pandemic/164755/>

Link Code: pd5c

Apr 20, 2020 ... Prisoners stand outside of the federal correctional institution in ... Alleged Safety Violations at Federal Prisons During Coronavirus Pandemic ...

House Dems call for release of 'as many prisoners as possible' due ...

Link: <https://www.foxnews.com/politics/dems-on-house-judiciary-committee-call-for-release-of-as-many-prisoners-as-possible-due-to-coronavirus-pandemic>

Link Code: odiy

Mar 30, 2020 ... Employees at federal prisons are facing supply shortages during the ... with uniquely difficult circumstances during the coronavirus pandemic.

Opinion | An Epicenter of the Pandemic Will Be Jails and Prisons, if ...

Link: <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>

Link Code: mwu0

Mar 16, 2020 ... The new coronavirus spreads at its quickest in closed environments. ... at all 122 federal correctional facilities across the country will not be ...

Amid coronavirus pandemic, federal inmates get mixed signals ...

Link: https://www.washingtonpost.com/investigations/amid-coronavirus-pandemic-federal-inmates-get-mixed-signals-about-home-confinement-releases/2020/04/24/0bbc5458-84de-11ea-a3eb-e9fc93160703_story.html

Link Code: pmj0

Apr 24, 2020 ... The early release of about 200 federal inmates to home confinement amid the coronavirus pandemic abruptly stalled earlier this week as the ...

Why some states are releasing prisoners during the coronavirus ...

Link: <https://www.vox.com/2020/4/3/21200832/jail-prison-early-release-coronavirus-covid-19-incarcerated>

Link Code: okur

Apr 3, 2020 ... As coronavirus cases rise in America's jails, some states have instituted early release. ... On the federal level, Attorney General William Barr released a memo ... for home confinement in response to the coronavirus pandemic.

U.S. attorney general orders release of more federal inmates due to ...

Link: <https://www.reuters.com/article/us-health-coronavirus-usa-prisons-emerge/us-attorney-general-orders-release-of-more-federal-inmates-due-to-coronavirus-pandemic-idUSKBN21M02R>

Link Code: ofyi

Apr 3, 2020 ... federal Bureau of Prisons (BOP) is facing emergency conditions due ... orders release of more federal inmates due to coronavirus pandemic.

Federal prisons make inmate calling, video visits free during pandemic

Link: <https://www.politico.com/news/2020/04/14/federal-prisons-make-inmate-calling-free-186383>

Link Code: p1w7

Apr 14, 2020 ... The Federal Bureau of Prisons is making calling and video visitation free for inmates after the coronavirus forced a halt to in-person visits, the ...

What it's like to be locked in prison during the coronavirus pandemic

Link: <https://www.inquirer.com/news/coronavirus-covid-19-pennsylvania-prisons-jails-inmates-guards-20200401.html>

Link Code: q502

Apr 1, 2020 ... In federal prisons, new arrivals are monitored for coughs or fevers, and officials have temporarily banned personal and most legal visits.

Mass releases from prisons could save thousands from the ...

Link: <https://www.businessinsider.com/mass-releases-from-federal-prisons-could-save-thousands-from-coronavirus-2020-4>

Link Code: op1k

Apr 8, 2020 ... Cook County Jail has the most confirmed cases of the coronavirus in a US ... the coronavirus pandemic a serious issue for US federal prisons.

Justice Department Investigators Inspect Federal Prisons for ...

Link: <https://www.wsj.com/articles/justice-department-investigators-inspect-federal-prisons-for-coronavirus-containment-procedures-11586978232>

Link Code: p84t

Apr 15, 2020 ... A federal prison in Butner, N.C., is among facilities that were hard-hit by the ... growing criticism of the federal Bureau of Prisons' response to the pandemic ...

Jails Release Thousands of Inmates to Stop Coronavirus Spread.

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